

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.230 OF 2022
WITH
APPLICATION FOR CANCELLATION OF BAIL 231 OF 2022

Nitin Dnyaneshwar Jadhav ...Applicant

Versus

The State Of Maharashtra And Others ...Respondents

Mr. S.B. Kadu, Advocate for the applicant.
Mr. A.V. Deshmukh, APP for respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd JANUARY, 2023

ORDER :

1. By this application filed under section 439 (2) of Code of Criminal Procedure, 1973, applicant seeks cancellation of anticipatory bail granted to respondents-accused in Crime No. 691/2022, registered with MIDC Police Station, Jalgaon, for offences punishable under sections 120-B, 406, 409, 420, 467, 468, 471 read with 34 of the Indian Penal Code.

2. First Information Report is lodged by Extension Officer, Village Panchayat, Panchayat Samiti, Jalgaon on 14.09.2022 alleging that accused persons namely gramsevak and sarpanch conspired together and by presenting forged

documents have withdrawn amount of Rs. 26,36,300/- and misappropriated the same. Said amount was given by the Government under Smart Gram Panchayat Scheme to Gram Panchayat Varad (Bk), Taluka and District- Jalgaon, for development work. It is further stated that Block Development Officer conducted an inquiry and submitted his report on 14.03.2022 and Deputy Executive Officer, Zilla Parishad, Jalgaon submitted inquiry report dated 05.09.2022, wherein gramsevak and sarpanch were equally held responsible for recovery of Rs. 26,36,300/-.

3. After registration of crime, respondents-accused filed anticipatory bail applications bearing Nos. 858/2022 and 866/2022, which are allowed by the Sessions Court vide order dated 12.10.2022. The applicant claiming to be a victim seeks cancellation of bail granted by the Sessions Court.

4. The learned advocate for the applicant was called upon to address on the *locus standi* of the applicant to seek cancellation of anticipatory bail granted to the accused. By relying on Jagjeet Singh and Others Vs. Ashish Mishra Alias Monu and Another, (2022) 9 SCC 321, he submits that the

applicant is a victim and therefore he has right to participate in the criminal proceeding even at the stage of bail.

5. Heard the learned advocate for the applicant and learned Additional Public Prosecutor for respondent-State. Perused the grounds raised in the application, documents filed along with the same and the citation relied upon by the learned advocate for the applicant.

6. In the case in hand, admittedly, First Information Report is lodged by Extension Officer, Village Panchayat, Panchayat Samiti, Jalgaon. Applicant claims that on the application of Anil Sapkale and other villagers, an inquiry was initiated by the Block Development Officer. On the basis of inquiry report of Block Development Officer and Deputy Executive Officer, Zilla Parishad, Jalgaon, accused gramsevak and sarpanch were held responsible for misappropriation of Rs. 13,18,150/- each. It was revealed that accused have misappropriated the amount received by grampanchayat under various heads. According to the learned advocate for the applicant, applicant being villager and tax payer is a victim, as accused have misappropriated the amount of village

development work.

7. Definition of victim given under section 2(wa) of Code of Criminal Procedure, 1973, is as follows:-

"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

8. Jagjeet Singh (supra) was the case wherein vehicles of accused persons were driven into crowd of farmers. Farmers were hit with an intention to kill. Many farmers and other persons were crushed by vehicles. Two accused persons escaped by running towards a nearby sugarcane field by taking cover by firing their weapons. Four farmers, one journalist, two others and driver of Thar vehicle were killed in the incident. Ten persons suffered major and minor injuries. Regular bail application of accused persons was allowed by the High Court. Informant and other close relatives of deceased, moved application to the Apex Court seeking cancellation of bail granted to the accused by taking a specific stand that counsel who was representing them before the High Court got disconnected from online proceeding and could not make effective submissions before the High Court.

This statement was not controverted by other side. Application moved by them seeking rehearing on the ground that victim could not participate in the proceeding was not considered by the High Court while granting bail to the accused. In these facts, the Apex Court considered the right of victim to be heard, by observing:

"15. Until recently, criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' — the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish 'crime' had surreptitiously turned its back on the 'victim', the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.

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24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against

acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

25. Adverting to the case at hand, we are constrained to express our disappointment with the manner in which the High Court has failed to acknowledge the right of the victims. It is worth mentioning that, the complainant in FIR No. 219 of 2021, as well as the present Appellants, are close relatives of the farmers who have lost their lives in the incident dated 03.10.2021. The specific stance taken by learned Senior Counsel for the Appellants that the Counsel for the 'victims' had got disconnected from the online proceedings and could not make effective submissions before the High Court has not been controverted by the Respondents. Thereafter, an application seeking a rehearing on the ground that the 'victims' could not participate in the proceedings was also moved but it appears that the same was not considered by the High Court while granting bail to the Respondent-Accused."

9. The citation relied upon by the applicant is distinguishable on the facts as informant and close relatives of

deceased farmers moved Apex Court for cancellation of bail granted by the High Court. It was not disputed that their counsel got disconnected from online proceeding before the High Court, therefore could not make effective submission. Therefore, their contention was accepted that they were not properly heard by the High Court while granting bail. This ruling, therefore, does not help the applicant.

10. In the instance case, First Information Report is lodged by Extension Officer. The applicant claims to be a victim being tax payer and resident of said village. Taking into consideration the definition of victim and facts of the present case, by no stretch of imagination, the applicant can be said to be a victim, and therefore, in my view, applicant cannot seek cancellation of bail granted to the accused by Sessions Court. Fact remains that the prosecution has not moved application for cancellation of bail granted by the Sessions Court.

11. While granting anticipatory bail to the accused, Sessions Court has taken into consideration the documents placed on record i.e. government resolutions dated 28.09.2006

and 18.09.2019, letters dated 02.02.2022, 14.03.2022 and 01.09.2022 and certificate issued by quality control inspector. It is observed that, these documents do not support the allegations made in the FIR. Certificate of quality control inspector shows that work is completed by maintaining quality of work. It is observed that prima facie there is no evidence on record to show that the applicants have misappropriated government funds and utilized said funds for themselves. It appears from the impugned order that the Sessions Court has exercised discretion in favour of accused on the basis of record produced before it. This Court does not find any merit in the application filed by the applicant.

12. For the aforestated reasons, applicant cannot be said to have any locus to seek cancellation of anticipatory bail granted in favour of respondents-accused. The applications, therefore, are dismissed.

[NITIN B. SURYAWANSHI, J.]